Supreme Court, U.S.
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No. _____

In The
Supreme Court Of The United States
October Term, 1996

JOHN C. KUCEJ,
Petitioner,

v.

STATEWIDE GRIEVANCE COMMITTEE,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI
WITH ATTACHED APPENDIX

Counsel of Record for Petitioner:

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QUESTION PRESENTED

Whether the Connecticut Statewide Grievance Committee [SGC] after it received a complaint alleging four counts of lawyer misconduct forwarded that complaint to the Grievance Panel [GP] for GP's determination of whether probable cause of misconduct existed, which GP determined that probable cause of guilt to Counts 2 and 3 existed, and did not find probable cause as to Counts 1 and 4 and GP filed that determination with SGC, which SGC judicially admitted that the no probable cause finding was correct, and the SGC ordered the Reviewing Committee [RC] to hold a hearing on Counts 2 and 3 only, but expressly ordered RC "if a particular claim of misconduct did not result in the finding of probable cause, that claim will not be considered by the reviewing committee, nor will testimony be accepted on that claim" (App. 3), and RC judicially admitted (App. 49) that its hearing was restricted to Counts 2 and 3; and the attorney was found not guilty on Counts 2 and 3, but despite the judicial admissions both by SGC its RC that Counts 1 and 4 would not be considered nor would testimony concerning them be permitted, in violation of the doctrines of res judicata, collateral estoppel, issue preclusion, the finality of judgment rule, which in this quasi-criminal proceeding amounts to double jeopardy, [certainly more than the civil law analogue to the criminal law's double jeopardy] violated Attorney Kucej's rights as guaranteed by the Sixth Amendment and the Fourteenth Amendment to the United States Constitution.

PARTIES

The Petitioners are as follows: John C. Kucej.

The Petitioner was a defendant in the State of Connecticut Grievance Procedure and Appellant in both the Superior Court and Appellant in the Supreme Court of the State of Connecticut.

The Respondent is the Connecticut Statewide Grievance Committee.

The Respondent was a defendant in the Supreme Court of the State of Connecticut.

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No. 97 -

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

JOHN C. KUCEJ,

Petitioner,

v.

STATEWIDE GRIEVANCE COMMITTEE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

John C. Kucej respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Connecticut entered in this proceeding on December 17, 1996, rehearing denied January 16, 1997, in order to resolve important federal questions concerning fundamental procedural and substantive due process rights which conflict with the relevant decisions of this Court.

DECISIONS BELOW

On November 12, 1992 a complaint against Petitioner was filed with the Respondent, Connecticut Statewide Grievance Committee (SGC, hereinafter) alleging violations of Rules 1.15, 3.1, 3.3, 3.4, 3.5, 4.1 and 8.4 of the Connecticut Rules of Professional Conduct for (1) wrongfully advising a client to suspend his alimony and support payments; (2) submitting a client's inaccurate financial affidavit to the court; (3) filing harassing and unscrupulous motions; and (4) releasing mortgage funds to his client contrary to his representation that he would hold those funds in escrow until resolution of the parties motions. The SGC forwarded the complaint to the grievance panel for the Waterbury (Connecticut) judicial district (local panel, hereinafter) pursuant to Connecticut Practice Book § 27F(a)(1).

On March 8, 1993 the local panel found probable cause that Rules 3.1 and 3.3(a)(4) were violated as to allegations (3) and (2), respectively. The local panel did not find probable cause with respect to the remaining

allegations, and the parties agreed (Respondent judicially admitted) that the failure to find probable cause with respect to allegations (1) and (4) constituted a determination of no probable cause as to those two claims. This same day, March 8, 1993, the local panel forwarded the file to the SGC, pursuant to PB § 27F.(g) "for its review." [Emphasis added]. (App. 2).

On April 2, 1993 the SGC noticed Attorney Kucej that "only the issue or issues related to the [local panel's] probable cause findings" would be subject to review by reviewing committee known as the Munro Reviewing Committee to which the SGC had referred the matter for a hearing to be held on May 5, 1993. Said notice additionally informed Attorney Kucej "that if a claim did not result in a finding of probable cause, that claim would not be considered by the Reviewing Committee." [Emphasis added]. (App. 3).

On May 5, 1993, at the Munro Reviewing Committee hearing, in response to a question by the undersigned to the chairperson of the Munro Reviewing Committee regarding the scope of the hearing, the chairperson verbally, from the bench, reaffirmed the aforementioned written notice that the only allegations of misconduct to be heard were Counts (2) and (3). (App. 11). After a full hearing on May 5, 1993 the Munro Reviewing Committee found Attorney Kucej not guilty of violating Counts 2 and 3.

However, despite SGC's judicial admission, written notice, and the Chairperson's verbal reaffirmation of said notice, chairperson Munro stated at the conclusion of the hearing that the Reviewing Committee made findings that there was probable cause to believe that Attorney Kucej

had violated allegations 1 and 4. Said findings were based on allegations of which the local panel had found no probable cause and of which the SGC expressly informed Attorney Kucej "would not be considered by the reviewing committee." (See SGC notice to Kucej). (App. 3).

The undersigned immediately objected on the grounds that the reviewing committee, as noticed in writing by the Respondent and orally by the chairperson herself, that if a claim did not result in a finding of probable cause, that claim would not be considered by the Reviewing Committee, (App. 11), and that the Reviewing Committee, would adjudicate only allegations 2 and 3 for which the local panel had found probable cause, and would not consider any other allegation.

After permitting the undersigned to brief this issue and objection, said brief and objection were sent to the SGC on July 18, 1993 (App. 8 - 16). On October 7, 1993, violating its Rules and both the federal and state constitution, SGC ruled against Attorney Kucej. (App. 19-20).

On October 7, 1993 another reviewing committee, the Cloutier Reviewing Committee of the SGC heard, despite the aforesaid illegality, and adjudicated Attorney Kucej guilty of violating Counts 1 and 4 and that illegality claim was rejected by SGC. Despite the aforesaid illegalities stated in Petitioner's brief (App. 21 - 27), the SGC affirmed. (A28-29). An appeal to the Superior Court followed on March 8, 1994.

In his appeal to the Superior Court, Attorney Kucej claimed that the actions of the SGC violated his federal

constitutional due processes rights, that the SGC, through the Munro Reviewing Committee unconstitutionally and extra-statutorily, exceeded its authority, and that the reprimand was barred by principles of res judicata, collateral estoppel and double jeopardy as "the legal principles that govern attorney disciplinary proceedings .... are 'adversary proceedings of a quasi-criminal nature'" (See In re Ruffalo, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed.2d 874); and that the SGC abused its discretion. The Trial Court rejected these claims and dismissed the appeal. (App. 30 - A43).

Petitioner reviewed each of the claims made to the trial court in its appeal to the Supreme Court of the State of Connecticut which affirmed the trial court's decision, Kucej v. Statewide Grievance Committee, 239 Conn. 449 (December 17, 1996). (App. 44 - 61). On December 23, 1996 Attorney Kucej timely moved the Connecticut Supreme Court for reargument. On January 16, 1997 the Supreme Court of the State of Connecticut denied Attorney Kucej's motion for reargument. (App. 62).

JURISDICTION

On October 7, 1993 Respondent SGC ruled that the RC, despite the aforesaid judicial admissions, had not acted illegally and that sanctions were properly imposed upon him, which recommendation was adopted by the SGC on February 17, 1994, and an appeal to the Superior Court of the State of Connecticut followed on March 8, 1994. In his appeal to the Superior Court, Attorney Kucej asserted that the actions of the SGC

violated his federal constitutional due processes rights, that the SGC, through the Munro Reviewing Committee unconstitutionally and extra-statutorily exceeded its authority, and that the penalty was barred by the principles of res judicata, collateral estoppel, double jeopardy, the finality of judgment rule, and that in this quasi-criminal proceeding amounts to more than the civil law analogue to the criminal law's defense of double jeopardy. The Trial Court rejected these claims and dismissed the appeal. (App. 30 - 43). Petitioner renewed each of the claims made to the trial court in its appeal to the Supreme Court of the State of Connecticut, pursuant to Connecticut Practice Book § 4023 and C.G.S. § 51-199(c). The Supreme Court of the State of Connecticut affirmed the trial court, albeit without addressing Attorney Kucej's double jeopardy claim, Kucej v. Statewide Grievance Committee, 239 Conn. 449 (December 17, 1996), (App. 44 - 61), and on December 23, 1996, rejected Attorney Kucej's timely moved motion for reargument. On January 16, 1997 the Supreme Court of the State of Connecticut denied Attorney Kucej's motion for reargument. (App. 62).

Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days of denial of rehearing.

The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

The United States Constitution Fourteenth Amendment providing that, "[No] State [shall] deprive any person of

life, liberty, or property without due process of law," is claimed to have been violated by the Respondent to the detriment of the Petitioner. The United States Constitution Fifth Amendment providing that, "[No] person shall be subject to the same offence to be twice put in jeopardy of life or limb," is claimed to have been violated by the Respondent to the detriment of the Petitioner.

STATUTORY PROVISIONS INVOLVED IN THIS CASE

A. SUMMARY OF RELEVANT CONNECTICUT PRACTICE BOOK PROVISIONS

Connecticut Practice Book § 27F.(a) (PB, hereinafter) authorizes any person to file a written complaint alleging attorney misconduct with the statewide bar counsel.

PB § 27F.(a)(1) authorizes the statewide bar counsel to forward the complaint to a local grievance panel for its investigation to determine whether probable cause exists that the attorney is guilty of misconduct.

PB § 27F(d) and C.G.S. § 51-90f requires the local panel to investigate each complaint to determine whether probable cause exists that the attorney is guilty of misconduct.

PB § 27F.(g) requires the local panel, within ninety (90) days from the date of the complaint, to file the following with the SGC:

1) "... written determination concerning whether probable cause exists that the respondent is guilty of misconduct,..."
2) a copy of the complaint and response,
3) transcript of any testimony heard by the panel,
4) a copy of any investigatory file and copies of any documents, transcripts or other written materials which were available to the panel.

These materials (1 - 4 above) shall constitute the panel's record in the case.

Upon receipt of the record from the local panel, PB § 27J.(a) authorizes the SGC to assign the case to a reviewing committee. If the SGC does not assign the case to a reviewing committee, PB § 27J.(i) requires the SGC to render a decision within 120 days from the date of the local panel's determination concerning probable cause.

Under PB § 27J.(c), if the local panel finds **probable cause** that the attorney is guilty of misconduct, the SGC or reviewing committee is required to hold a **hearing** on the complaint.

However, under PB § 27J.(c), if the local panel determines that **probable cause does not exist**, the SGC or the reviewing committee is required to **review** the determination of **no probable cause**, take evidence if it deems appropriate and, if it determines that probable cause does exist, then a **hearing** ensues.

STATEMENT OF THE CASE

In this case a complaint was filed with the statewide bar counsel pursuant to PB § 27F.(a). The statewide bar counsel forwarded the four count complaint to the local panel pursuant to PB §27F.(a)(1). Pursuant to PB § 27F.(d) the local panel investigated the complaint and found probable cause as to counts 2 and 3 of the complaint and made no express findings of probable cause as to counts 1 and 4, which the SGC judicially admitted and agreed with Petitioner, constituted a finding of no probable cause as to those claims.

The local panel, then, pursuant to PB § 27F.(g) filed its determinations with the SGC for "its review."[2] The SGC then notified Petitioner that it was forwarding solely the local panel's findings of probable cause to the Munro Reviewing Committee, and further informed Petitioner that "If a particular claim of misconduct did not result in a finding of probable cause, that claim w[ould] not be considered by the reviewing committee, nor w[ould] testimony be accepted on that claim." (App. 3).

At this point it is critical to be cognizant of the relevant Practice Book grievance procedures in order to see, from Petitioner's perspective, the procedures facing him and the reasonableness of his actions as well as the unconstitutionality of the Respondent SGC's and Munro Reviewing Committee's procedures (i.e. undue process),

---

[2]See local panel's notice to Attorney Kucej informing him that said findings would be sent to SGC for SGC review.(App. 2)

as well as the errors of both the trial court and the Supreme Court of the State of Connecticut.

A reviewing committee is an agent of the SGC. (PB §§ 27J.(a) and 27M.1). The SGC may assign a case to a reviewing committee upon receipt of the record from the local panel, pursuant to PB § 27J.(a). (App. 66 - 67). That did not happen in the instant case and it is judicially admitted that the SGC and the Petitioner agreed the SGC found no probable cause.

> "The parties, however, agree that the local panel's failure to make any express findings with respect to those remaining allegations constitute a determination of no probable cause as to those claims." - v. Judicial Admission. Kucej v. Statewide Grievance Committee, 239 Conn. 449, 454, fn. 7 (1996).

That judicial admission should have been binding on the SGC.

The local panel's findings of no probable cause, judicially admitted by the SGC's (the principal to the panel/reviewing committee) notice to the accused attorney affirmatively and expressly informed him that,

> "The subject of review at the hearing will only be the issue or issues related to the probable cause finding. Please refer to the letter issued either by the grievance panel or the Statewide Grievance Committee setting forth the probable cause finding. The probable cause finding may not include every allegation of misconduct made

in the complaint. If a particular claim of misconduct did not result in a finding of probable cause, that claim will not be considered by the reviewing committee, nor will testimony be accepted on that claim." [Emphasis added]. (App. 3)

In contrast, the local panel's findings of **no probable cause** under PB § 27J.(c) require the SGC or a reviewing committee to merely **review**, as opposed to hold an adjudicatory hearing on, **no probable cause** findings of the local panel; after **review** of the panel's **no probable cause** findings, which the SGC judicially admitted it reviewed and affirmed, (App. 67), the SGC affirmed the no probable cause as to Counts 1 and 4, then, and only then, did the SGC order the RC to hold the public **hearing on Counts 2 and 3**. The Petitioner was found not guilty as to those charges.

And, of course, surrounding this statutory procedural scheme is this Honorable Court's Constitutional procedural and substantive due process jurisprudence. Thus, in reviewing the local panel's findings of no probable cause, the SGC did not reverse that finding, this Court's procedural due process jurisprudence requires the accused attorney to be apprised of the charges facing him prior to the adjudication of his fundamental right to pursue his livelihood as an attorney and that cannot be impeded by state action. In Re Ruffalo, 390 U.S. 544 (1968).

Nevertheless, in this case, the SGC informed Attorney Kucej that the Munro Reviewing Committee would be reviewing solely the local panel's probable cause findings, and further expressly informed Attorney

Kucej that the Munro Reviewing Committee would not consider the local panel's no probable cause findings, nor would it permit Attorney Kucej to put on testimony regarding the local panel's no probable cause findings.

Accordingly, because the Munro reviewing committee was not to consider the local panel's no probable cause findings, as the SGC's notice and Chairperson Munro's oral affirmation of said notice demonstrate that it would not consider said no probable cause findings, who, then, would consider the local panel's no probable cause findings? That is, what is the only other constitutionally and statutorily competent entity to review the local panel's findings of no probable cause at this point if the Munro Reviewing Committee should not? The SGC. Why? Because (1) PB § 27J.(c)'s employment of the mandatory "shall" and the disjunctive "or", and (2) the SGC written express notice to Attorney Kucej as well as chairperson Munro's oral affirmation thereof expressly informing Attorney Kucej that no probable cause findings would be considered.

At this juncture, due to PB § 27J.(c)'s mandatory "shall" and its disjunctive "or" and due to the notice afforded Attorney Kucej from the SGC, the Munro reviewing Committee had neither statutory nor constitutional authority to review the local panel's no probable cause findings, much less consider them and render a decision on them against Attorney Kucej. Without proper notice that the Munro Reviewing Committee would consider and render judgment on the local panel's no probable cause findings, the injustice of it so doing is manifest.

Accordingly, the only other entity statutorily and

constitutionally competent to review the local panel's no probable cause findings was the SGC. Under the statutory scheme one of three things occurred: either (1) the SGC reviewed the local panel's findings of no probable cause itself and impliedly affirmed them, while forwarding "only the issue or issues related to the panel's probable cause findings" to the Munro Reviewing Committee which absolved Attorney Kucej of said allegations; or (2) the SGC altogether neglected its PB § 27J.(c) statutory duty to review the local panel's findings of no probable cause, which under the time limitation articulated in PB § 27J.(i), renders the local panel's no probable cause findings impliedly dismissed by the SGC, or (3) the Munro Reviewing Committee extra-statutorily and therefore, unconstitutionally considered and rendered adverse judgment on that which was beyond its authority to adjudicate, thereby depriving Petitioner of his procedural due process rights to adequate notice.

However, because "[p]ublic officers, acting in their official capacity, are presumed until the contrary appears, to have acted legally and properly," Brookfield v. Candlewood Shores Estates, Inc., 201 Conn. 1, 6 (1986), option (1) above should be presumed to have occurred --

> (1) the SGC reviewed the local panel's findings of no probable cause itself and impliedly affirmed them, while forwarding "only the issue or issues related to the panel's probable cause findings" to the Munro Reviewing Committee which absolved Attorney Kucej of said allegations, thereby rendering the Munro Reviewing Committee judgment beyond its authority, a nullity.

At this juncture, the case should have been over: The SGC having impliedly affirmed the local panel's no probable cause findings and the Munro Reviewing Committee having reversed the local panel's probable cause findings.

However, because the Munro Reviewing Committee reversed that which was not sent to it, nor which was noticed to Attorney Kucej, the SGC permitted the fiasco to proceed unconstitutionally to another reviewing committee, the Cloutier Reviewing Committee, for a second adjudication in violation of the thing having been adjudicated by the SGC itself, thereby violating principles of res judicata, collateral estoppel and alternatively, because the attorney disciplinary proceedings are quasi-criminal in nature (see In re Ruffalo, 390 U.S. 544 (1968)), violating not only due process but also principles of, or at least analogous to, criminal law, double jeopardy.

REASONS FOR GRANTING THE WRIT

The Supreme Court of the State of Connecticut has decided an extremely important questions of federal procedural and substantive Due Process which is in conflict with This Honorable Court's decisions of: In re Ruffalo, 390 U.S. 544 (1968), Goldberg v. Kelly, 397 U.S. 254, and progeny, Federal Department Stores v. Moitie, 452 U.S. 394 (1981).

It is constitutionally infirm to permit in a quasi-criminal proceeding, an accused to face the same charges of guilt a second time after an initial adjudicatory body renders judgment of not guilty which was affirmed by the SGC which, without statutory authority, permitted its agents to render judgment again. Such procedure violates due process and arbitrarily and capriciously ignores its statutory duty, and suffers the Petitioner to be twice tried for the same Counts for which he was found not guilty, thereby violating his fundamental constitutional rights.

This is the process which was undue for which Petitioner respectfully seeks *Certiorari* to this Honorable Court for relief from transgression of a fundamental right, which the trial court and the Supreme Court of the State of Connecticut erroneously found to be due process.

CONCLUSION

The Petitioner's Sixth Amendment and Fourteenth Amendment rights guaranteed by the United States Constitution have been violated as a result of the SGC's judicial admission that the Petitioner was found not guilty of Counts 1 and 4 of a complaint charging him with misconduct, and despite that judicial admission that the Petitioner was not guilty of Counts 1 and 4, the Respondent, in violation of the doctrines of res judicata, collateral estoppel, issue preclusion, the finality of judgment rule, which in this quasi-criminal proceeding exceeds the civil law analogue of double jeopardy, has, in fact and in law subjected the Petitioner to a second, a subsequent hearing in which he was found guilty of that which he was previously found not guilty, Counts 1 and 4. Respectfully, the Petition for Certiorari should be granted.

Dated: New Haven, CT.
April 16, 1997

Respectfully submitted,

Roger J. Frechette
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APPENDIX

STATE OF CONNECTICUT

/Seal of Connecticut/

GRIEVANCE PANEL

GAIL S. KOTOWOSKI
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Guilford, Ct 06437-0037
March 8, 1993

ATTORNEY FOR PANEL
Judicial District
of Waterbury

John C. Kucej, Esq.
95 North Main Street
Waterbury, CT 06702

Re: Berdan v. Kucej
92-0427

Dear Attorney Kucej:

Please be advised that on March 4, 1993, the Waterbury Grievance Panel found probable cause of attorney misconduct, as alleged in the complaint. There is probable cause that the following provisions of the Model Rules of Professional Conduct were violated:

Rule 3.1 Meritorious Calamus and Contentions: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding as to require that every element of the case be established.

Rule 3,3(a)(4): Candor Toward The Tribunal: (a) A lawyer shall not knowingly: (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

The panel is most concerned that you offered a financial affidavit prepared by your client that grossly understated his income. Although your client did in fact subscribe and swear to its accuracy, you had an obligation to investigate its accuracy. At the 3/26/90 hearings you attempted to offer a document that showed your client earned less than $1400.00, you made no attempt to take any remedial action, until pressed by the court.

The file has been forwarded to the Statewide Grievance Panel for its review, and that the Panel will contact you directly.

If you have any questions, please do not hesitate to contact me.

Very truly yours,
/s/ Gail S. Kotowski
GAIL S. KOTOWSKI

GSK:mes
cc: Susan M. Berdan
Waterbury Grievance Panel Members

GRIEVANCE HEARING

The hearing will be conducted by a subcommittee, known as a reviewing committee, of the Statewide Grievance Committee

The subject for review at the hearing will only be the issue or issues related to the probable cause finding. Please refer to the letter issued wither by the grievance panel of the Statewide Grievance Committee setting forth the probable cause finding. The probable cause finding may not include every allegation of misconduct made in the complaint. If a particular claim of misconduct did not result in a finding of probable cause, that claim will not be considered by the reviewing committee, nor will testimony be accepted on that claim. THe test of the Rule or Rules of Professional Conduct cited as a basis for the finding of probable cause by the grievance panel or Statewide Grievance Committee is available through the office of the Statewide Grievance Committee.

Complainants and Respondents have the right to have counsel present at the hearing. Respondents have the rights to be heard in their own defense and by witnesses and counsel. The complainant and the respondent shall be entitled to examine or cross-examine witnesses. At the conclusion of the evidentiary/ factfinding phase of the hearing the complainant and the respondent shall have the opportunity to make a statement, either individually or through counsel.

If you require the presence of a witness to provide testimony in your behalf, it is your responsibility to ensure the presence of the witness by subpoena or otherwise. You may bring any documentary evidence you believe relevant to the finding of probable cause but the hearing committee shall exclude irrelevant, immaterial

or unduly repetitious oral or documentary evidence.

Hearings by reviewing committees are generally scheduled to be conducted and completed in one hour. If it is determined that additional time is needed, either more time will be allotted on the hearing day or a second hearing will be scheduled to complete the matter.

The reviewing committee will render and file with the Statewide Grievance Committee a proposed decision. A copy of the proposed decision will be forwarded to you and you may, within fourteen days of the issuance of the proposed decision, submit to the Statewide Grievance Committee a statement in support of, or in opposition to, the proposed decision. THe Statewide Grievance Committee will then render a final decision.

The record of the complaint is available for inspection, with reasonable notice, at the office of the Statewide Bar Counsel.

If you require, for you own testimony or that of any witness, the services of an interpreter, please contact the office of the Statewide Bar Counsel in writing within seven (7) days of the date of the attached notice. If you are disabled and required a reasonable accommodation, please let us know in advance by telephoning 568-5157 so that we may discuss your individual needs. Hearing and speech-impaired parties with a TDD can contact the office of the Statewide Bar COunsel through the COnverse Communication Center (CCC) which provides relay message services between TDD and non-TDD users: 1-800-842-9710.

INCLEMENT WEATHER

In the event of inclement weather you may telephone the

office of the Statewide Grievance Committee (568-5175) to determine whether the hearing will go forward as scheduled.

STATEWIDE GRIEVANCE COMMITTEE

Susan M. Berdan
Complainant :

vs. : Grievance Complaint
92-0427

John C. Kucej
Respondent :

Pursuant to Practice Book §27J, the undersigned, duly appointed reviewing committee of the Statewide Grievance Committee conducted a hearing at the Superior Court, 235 Church Street, New Haven, Connecticut on May 5, 1993. The hearing addressed the complaint filed November 12, 1992 and the finding filed by the Grievance Panel for the Judicial District of Waterbury on March 15, 1993 that there existed probable cause that the Respondent violated Rules 3.1 and 3.3(a)(4) of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant and the Respondent on April 2, 1993. The Complainant appeared and was heard by this reviewing Committee. The Respondent appeared represented by Attorney Roger J. Frechette and was heard by this reviewing committee. Exhibits were received into evidence.

This reviewing committee concluded that the record lacked clear and convincing evidence that the Respondent violated Rules 3.1 and 3.3(a)(4) of the Rules of Professional Conduct. However, after reviewing the Complainant and Answer and Briefs to this issue filed by the Complainant on May 13, 1993 and by the Respondent's counsel on May 14, 1993, we also

conclude that there exists probable cause that the Respondent violated Rules 1.15 and 8.4 of the Rules of Professional Conduct by allegedly releasing escrow funds to his client without satisfying the conditions of release. Accordingly, a hearing will be scheduled on this finding of probable cause.

/s/ Lynda Munro
Attorney Lynda B. Munro

/s/ Linda L. Randell
Attorney Linda L. Randell

/s/ Joseph McFarland
Mr. Joseph G. McFarland, Jr.

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ROGER J. FRECHETTE
MEMBER OF CONNECTICUT AND NEW YORK BARS

MATTHEW E. FRECHETTE
MEMBER OF CONNECTICUT NEW YORK AND FLORIDA BARS

May 11, 1993

Linda Batter Munro, Esq.
35 Plains Road
P.O. Box 959
Essex, CT 06426

Re: Berdan v. Kucej
92-0427

Dear Chairperson Munro:

Under date of November 6, 1992, the complainant (Susan M. Berdan) filed a three page complaint against my client.

Paragraph 4 of the complaint specifically addresses an issue of breach of an escrow agreement. Without getting into detail, the correspondence by and between the complainant and the respondent addresses that issue. Pursuant to Practice Book §27F(a)(1) the Statewide Bar Counsel referred the entire complaint to a grievance panel which, pursuant to Exhibit A attached hereto,

found probable cause that rule 3.1 was violated, and that rule 3.3(a)(4) also was violated. That panel filed its written determination with the Statewide Grievance Committee that probable cause existed.

The Statewide Grievance Committee, pursuant to §27J did not, pursuant to sentence two of subsection (c):

> "If the Grievance Panel determines that probable cause does not exist, the Statewide Grievance Committee or the Reviewing Committee shall review the determination of no probable cause, take evidence if it deems appropriate and, if it determines that probable cause does exist, thereafter hold a hearing."

Therefore, pursuant to §§(c), sentence one:

> "if the Grievance Panel determines that probable cause exists that the respondent is guilty of misconduct, the Statewide Grievance Committee or the Reviewing Committee shall hold a hearing on the complaint."

Pursuant thereto, the matter was assigned before Your Honor's reviewing subcommittee as to the issues of:

> Please be advised that on March 4, 1993, the Waterbury Grievance Panel found probable cause of attorney misconduct, as alleged in the complaint. There is probable cause that the following provisions of the Model Rules of Professional Conduct were violated:
>
> Rule 3.1 Meritorious Claims and Contentions: A lawyer shall not bring or

defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding as to require that every element of the case be established.

Rule 3.3(a)(4): Candor Toward The Tribunal: (a) A lawyer shall not knowingly: (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

The panel is most concerned that you offered a financial affidavit prepared by your client that grossly understated his income. Although your client did in fact subscribe and swear to its accuracy, you had an obligation to investigate its accuracy. At the 3/26/90 hearings you attempted to offer a document that showed your client earned less than $1400.00, you made no attempt to take any remedial action, until pressed by the court.

The file has been forwarded to the Statewide Grievance Panel for its review, and that the Panel will contact you directly.

If you have any questions, please do not hesitate to contact me.

Your Honor will further remember at the commencement of our hearing, I asked specifically if the hearing involved only alleged violations of rules 3.1 and 3.3(a)(4), and the response from the reviewing subcommittee was in the affirmative.

That hearing concluded on Wednesday, May 5.

Your Honor then stated that it was your intention to refer the alleged violations of paragraph 4, as aforesaid, to the Statewide Grievance Committee for action. The undersigned objected, stating, in essence, that because the reviewing subcommittee was a creature of the Practice Book, that no such provision applied, and that the reviewing subcommittee would be acting without any authority and in excess of its jurisdiction.

A clear reading of the Practice Book, it is submitted, confirms the respondent's assertions in this case, as Exhibit B, over the signature of Daniel B. Horwitch, Statewide Bar Counsel, articulates the date, time, and as hereinbefore stated, the subject matter of the hearing, both pursuant to the Practice Book and the direct inquiry of the undersigned, set forth the due process requirements which must be afforded the respondent.

In Re Ruffalo, 390 US 544(1968) held that a lawyer has a right to procedural due process in state bar proceedings. In Statewide Grievance v. Rozbicki, 219 Conn 473,481 (1991), the Supreme Court stated that the Court controls the situation of procedure in its discretion as the interests of justice may require. But it specifically found that specific misconduct for which Rozbicki was disciplined was contained in the

presentment. That issue was covered well In Re Herman N. Horwitch, 21 Conn Supp 363,366:

> "Presentment form is conduct...shall be made by written complaint of the Grievance Committee or of the State's Attorney or of any member of the bar by the direction of the Court."

Even in that situation, a presentment must be made by a written complaint. Granted, Judge DeMayo in Grievance Committee v. Botwick No. 32 23 37, Superior Court at New Haven, although a lawyer was not charged with breach of an escrow agreement, found him to have violated the escrow agreement, but under circumstances which are entirely foreign to the instant case. In that case, it must be remembered, was before a Judge of the Superior Court with inherent rights, indeed duties to:

> "...The power to declare this forfeiture is a summary one inherent in the Courts, and exists not to meet out punishment to an offender, but that the administration of justice may be safeguarded in the Court's and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of a legal profession".

However, it is clear in the case of Statewide Grievance Committee v. Botwick, that the issue of the breach of the escrow agreement was entered into by the respondent

without any objection, and the case was decided by Judge DeMayo because the evidence was before him.

Two great differences are noted in the instant proceeding. Firstly, this proceeding is not before a court, as it is before the Statewide Grievance Committee and its entities, none of whom have inherent authority, and therefore, all actions must be pursuant to the Practice Book. Secondly, an objection has been made, timely, as to any transgressions from Practice Book authority. When one considered, it is submitted that Grievance Committee v Goldfarb, 9 Conn App 464,474 controls:

> "The Court's are, as they should be, left free to act as may in each case seem best in this matter of most important concern to them and to the administration of justice. They may of their own initiative, and without complaint, set on foot inquiries as to professional conduct and fitness, or they may, in their discretion, entertain a complain received from any source within or without the profession. Statute and rule provide orderly methods of procedure processing the advantage of uniformity, thoroughness, and the promise of sufficiency. But the power of the Court's is left unfeddered to act as situations, as they may arise, may seem to require, for efficient discipline of misconduct and the purging of the bar from the taint of unfed membership. Such statutes as ours, are not restrictive of the inherent powers which reside in Court's to require into the conduct of their own officers, and to discipline them from misconduct." [emphasis added]

This 1986 decision reiterates that the inherent power resides in the Court alone. It resides no where else. Judge Burns in Statewide Grievance Committee v. Michael A. Peck, No. 91 0503797 (March 2, 1992), 1992 Ct. CaseBase 1944, CSCR 376, again reiterates the situation that a presentment is a proceeding Sui Generis and reiterates that a Court has the inherent authority to act.

Respectfully, the Statewide Grievance Committee has no such inherent authority, and, pursuant to In Re Ruffalo, Supra, and In Re Oliver, 333 US 257, due process required fairness to an attorney. A complaint has been made, responses were made, all of which resulted in a hearing before the reviewing subcommittee. The reviewing subcommittee should decide the issues tried in front of it, it should report as required by the Practice Book, and that should be the end of this matter.

This respondent, and every respondent, should not be subject to piecemeal litigation.

Very truly yours,
/s/ Roger J. Frechette
Roger J. Frechette

RJF/ms

FRECHETTE & FRECHETTE
ATTORNEYS AT LAW
12 TRUMBULL STREET
NEW HAVEN, CONNECTICUT 06511-6301
(203) 865-2133

ROGER J. FRECHETTE
MEMBER OF CONNECTICUT AND NEW YORK BARS

MATTHEW E. FRECHETTE
MEMBER OF CONNECTICUT NEW YORK AND FLORIDA BARS

July 15, 1993

Hon. Daniel B. Horwitch
State Bar Counsel
Second Floor, Suite Two
287 Main Street
East Hartford, CT 06118-1885

Re: Grievance Complaint #92-0427, Berdan v. Kucej

Dear State Bar Counsel Horwitch:

I am enclosing herewith a brief (in letter form) that I submitted to the panel that heard the complaint against Attorney Kucej.

I can't find any authority for this procedure to take place, as I also am unable to find any case which gives the Statewide Grievance Committee any inherent power; therefore, if there is no practice book/ statutory authority for a second hearing, I think that there can be no such hearing.

In any event, may I be extended the courtesy of arguing this issue before the Statewide Grievance Committee, as

I don't think Attorney Kucej should be subjected to multiple prosecutions.

Yours truly,
/s/ Roger J. Frechette
Roger J. Frechette

RJF/mpk
encl.
cc: John C. Kucej, Esq.

STATE OF CONNECTICUT

/Seal of Connecticut/

STATEWIDE GRIEVANCE COMMITTEE

Second Floor - Suite Two

287 Main Street, East Hartford, Connecticut 06118-1885

Daniel B. Horwitch

Statewide Bar Counsel

(203) 568-5157

July 28, 1993

Attorney Roger J. Frechette
Frechette & Frechette
12 Trumbull Street
New Haven, CT 06511-6301

Re: Grievance Complaint #92-0427, Berdan vs. Kucej

Dear Attorney Frechette:

Your letter of July 15, 1993 has been referred to Attorney Suzanne E. Caron, CHair of the Statewide Grievance Committee, for consideration of your request for argument before the committee. Acting on behalf of the committee, Attorney Caron has directed that the issue of the authority of the first reviewing committee to render a new finding of probable cause should be argued before the reviewing committee at a hearing scheduled for August 11, 1993. Accordingly, the hearing will go forward on August 11, 1993 and your should be

prepared to address facts germane to the probable cause determination, in addition to the issue raised in your July 15, 1993 letter.

Sincerely,
/s/Daniel B. Horwitch
Daniel B. Horwitch

DBH/lh
cc: Attorney Suzanne E. Caron
Attorney Harold B. Schramm
Attorney Thomas Cloutier
Mr. Carmen Donnarumma

cc: Susan M. Berdan

STATE OF CONNECTICUT

/Seal of Connecticut/

STATEWIDE GRIEVANCE COMMITTEE

Second Floor - Suite Two

287 Main Street, East Hartford, Connecticut 06118-1885

Daniel B. Horwitch

Statewide Bar Counsel

(203) 568-5157

October 7, 1993

Attorney Roger J. Frechette
Frechette & Frechette
12 Trumbull Street
New Haven, CT 06511-6301

Re: Grievance Complaint #92-0427
Berdan v. Kucej

Dear Mr. Frechette:

At a meeting conducted on September 23, 1993, the Statewide Grievance Committee reviewed your May 11, 1993 objection to the additional findings of probable cause rendered by the reviewing committee of Attorneys Lynda B. Munro, Linda L. Randell and Mr. Joseph G. McFarland Jr. The Committee determined that the first two sentences of subsection (c) of the Practice Book §27J were not mutually exclusive and concluded that it was not inappropriate for the reviewing committee to

determine that there existed probable cause on issues beyond those determined by the grievance panel. Accordingly, the Committee overruled your objection and directed that the hearing scheduled for November 10, 1993 proceed a scheduled.

Sincerely,
/s/Daniel B. Horwitch
Daniel B. Horwitch

DBH/pr

cc: Susan M. Berdan

FRECHETTE & FRECHETTE
ATTORNEYS AT LAW
12 TRUMBULL STREET
NEW HAVEN, CONNECTICUT 06511-6301
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ROGER J. FRECHETTE MEMBER OF CONNECTICUT AND NEW YORK BARS

MATTHEW E. FRECHETTE MEMBER OF CONNECTICUT NEW YORK AND FLORIDA BARS

January 27, 1994

STATEMENT IN OPPOSITION TO PROPOSED DECISION

The Respondent objects the proposed decision of the Reviewing Committee of the Statewide Grievance Committee.

On page two, paragraph four of its decision, the Reviewing Committee agreed that the Memorandum of Decision of the Superior Court, Honorable William J. Sullivan, which dissolved the marriage between the complainant and her husband, required that Respondent's client was to convey his title to the Complainant, which

he did. In return for which the Complainant gave the Respondent's client a note secured by a second mortgage on the property in the amount of $90,000.00. The Memorandum of Decision expressly provides that the note and mortgage would be due and payable upon Complainants sale of her house.

That Memorandum of Decision is dispositive of the instant case. On page 8 of that Judgment the critical portion is as follows:

> "Simultaneously, with the conveyance of said title to the defendant, she shall give to the plaintiff a note secured by a second mortgage on said marital home in the amount of $90,000.00. Said note and mortgage shall carry no interest. Said note and mortgage shall be due and payable [Reviewing Committee articulates only due] on the happening of the first of the following events; namely, the death of the defendant, remarriage of the defendant, cohabitation by the defendant with an unrelated male, sale of said marital home

by the defendant..." [emphasis added]

Bearing in mind that finding on page two by the Reviewing Committee, the most important paragraph in the decision is page three, paragraph two. It is quoted below:

> "The closing on the sale of the marital home took place on July 17, 1992. Attorney Buccino did not inform the Respondent of the time or the place of the closing and it went forward in his absence and without a release from his client." [emphasis added]

Despite a valid order of Superior Court, the Complainant, her attorney, Attorney Buccino, nor the closing attorney obeyed a Judgment of that Court. They had no right whatsoever to disobey a Judgment of the Superior Court. Nowhere is it found that judgment not to be final, because it was, and is, a final judgment.

Along the same lines, Attorney Kucej had no right

to permit any opponent of his client (the complainant or Attorney Buccino) to not obey the order of Superior Court, indeed he had the duty to make sure his client was a beneficiary of that order of Superior Court and that the order be obeyed. This he did.

The Reviewing Committee takes issue with Attorney Kucej's analysis of his letter of August 1, 1993. However, that letter is long after the closing, long after the order of Superior Court should have been obeyed, and long after Attorney Kucej's client should have had been paid the money to which he had a right given to him by Superior Court. If Attorney Kucej did anything wrong, it is that he even permitted Attorney Buccino to make arrangements to have the money held through August 3, 1993, and that was a benefit to the complainant.

The Respondent testified that his August 1, 1993 letter to Attorney Buccino was intended to convey his

intention only to hold in escrow the funds until August 3, 1993. That is what it says. Regardless, this Honorable Statewide Grievance Committee has already found that Attorney Buccino's misuse of the release of the second mortgage given to him by Attorney Kucej, under trickery, did not constitute a finding of a breach of our Rules. If this is so, neither has the Respondent violated any Rule. This very Reviewing Committee has, next to the last paragraph on page five, found Attorney Buccino's where it holds:

> "We must also note our criticism of the conduct of Attorney Buccino in this matter in admittedly, intentionally not informing the Respondent that the closing on the Complainant's house would be going forward when it did."

It simply is unfair to impose justice in a manner in which the Complainant's attorney, the real wrongdoer, walks away scott free from his wrongs, and the Respondent, who, respectfully, did infinitely less, was

found to have violated Rules 1.15(b) and Rule 8.4(c).

Further, this Honorable Statewide Grievance Committee will recall that the first accusations made against the Respondent resulted in his being vindicated at the hearing. At the end of that hearing, and only in the opinion, without any rule so permitting [particularly in view of a grievance panel finding no probable cause and the Statewide Grievance Committee not overruling that finding], this Respondent then, and only then, was forced to go through this subsequent hearing without any legal authority for that procedure, all of which has been outlined in our document to the Statewide Grievance Committee of July 15, 1993.

Respectfully, this statement in opposition to the proposed decision of the Statewide Grievance Committee should be adopted, and the Statewide Grievance Committee should find no violation of the rules by the Respondent, and that the Statewide Grievance Committee

administer justice even handedly.

RESPECTFULLY SUBMITTED,
THE RESPONDENT, JOHN C.
KUCEJ

BY /s/Roger J. Frechette
Roger J. Frechette, Esq.
Juris #20847
Frechette & Frechette, Esqs.
12 Trumbull Street
New Haven, Connecticut 06511
Tel. no. 865-2133

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, on this 27th day of January, 1994 to all counsel and pro se parties of record.

/s/ Roger J. Frechette
Roger J. Frechette
Commissioner of the Superior Court

STATE OF CONNECTICUT

/Seal of Connecticut/

STATEWIDE GRIEVANCE COMMITTEE

Second Floor - Suite Two

287 Main Street, East Hartford, Connecticut 06118-1885

Daniel B. Horwitch

Statewide Bar Counsel

(203) 568-5157

02/17/94

SUSAN M BERDAN
1 FAWCREST DRIVE
NEW FAIRFIELD CT 06812

JOHN C KUCEJ
95 NORTH MAIN ST
WATERBURY CT 06702

RE: GRIEVANCE COMPLAINT #92-0427
BERDAN VS. KUCEJ

Dear Complainant & Respondent:

The Statewide Grievance Committee has carefully studied the record of the above-referenced grievance complaint, including the proposed decision of the reviewing committee, which conducted hearings in this matter on August 11, 1993, September 08, 1993 November 10, 1993. Based upon its review of the record, Statewide Grievance Committee, at a meeting held on February 1994, has decided to adopt the proposed decision of the reviewing committee. Accordingly, the Respondent, John c. Kucej, is hereby REPRIMANDED by the Statewide Grievance Committee.

Sincerely,
/s/ Daniel B. Horwitch
Daniel B. Horwitch

cc: Attorney Gail S. Kotowski
Attorney Roger J. Frechette

CV 94 053 55 26	:	SUPERIOR COURT
JOHN C. KUCEJ	:	JUDICIAL DISTRICT OF
	:	HARTFORD/NEW BRITAIN
V.	:	AT HARTFORD
STATEWIDE GRIEVANCE COMMITTEE	:	DECEMBER 7, 1995

MEMORANDUM OF DECISION

Plaintiff John C. Kucej, an attorney, appeals a decision of the defendant statewide grievance committee reprimanding the plaintiff, based on a complaint filed by Susan M. Berdan. The committee acted pursuant to Practice Book §§ 27J and 27M and General Statutes §§ 51-90g and 51-90h. The appeal is brought pursuant to Practice Book § 27N. See also, Pinsky v. Statewide Grievance Committee, 216 Conn. 228 (1990). The court finds the issues in favor of the defendant committee.

The facts essential to the court's decision are not in dispute. The plaintiff represented Charles G. Berdan, the complainant's former husband, in a marriage dissolution

action, which culminated in a final judgment in 1989. As part of the resolution of that action, the complainant was granted title to the parties' residence subject to a mortgage in favor of her husband. The court's judgment provided that the mortgage note would be payable upon the complainant's sale of the residence. The judgment provided that the mortgage note would be payable upon the complainant's sale of the residence. The judgment also obligated the husband to pay periodic alimony and child support to the complainant.

In 1990, the former husband stopped paying alimony and support. This led to cross motions for contempt and modification. The plaintiff represented the former husband in these matters. The former husband was found in contempt and ordered to pay arrearage. However, on the basis of the financial affidavit prepared by the plaintiff, the court reduced future alimony and support payments to the complainant. The financial affidavit contained inaccurate information, significantly

understating the former husband's actual income.

In July 1992, the complainant decided to sell the residence. About the same time, she learned that her former husband was planning to move from Connecticut and that he was experiencing employment difficulties. The closing on the sale was held on July 17, 1992. The former husband was not present, and the buyer's attorney held the amount due him on the mortgage in escrow. A few days later, fearing that her alimony and child support were in jeopardy, the complainant filed a motion in Superior Court requesting that the former husband post some security for his obligation and requesting specifically that the amount of the mortgage note be held in escrow and not paid to the former husband except upon order of the court. In the meantime, the plaintiff, acting in behalf of the former husband, had filed a motion to hold the complainant in contempt for not releasing the mortgage amount to him upon sale of the residence.

The two motions were scheduled to be heard by the court on August 3, 1992. On August 1, 1992, the plaintiff delivered a letter to the complainant's attorney requesting that the mortgage amount be turned over to him, "which I will hold in escrow until this matter is resolved." The hearing on the motions did not go forward on August 3.

Shortly thereafter, without any resolution of the outstanding motions for security and contempt, the plaintiff released the mortgage funds to his client, the former husband.

In November 1992, the complainant filed the present complaint with the defendant committee. In her complaint, she alleged that the plaintiff violated the Rules of Professional Conduct (1) by wrongfully advising her former husband unilaterally to suspend alimony and support payments; (2) by preparing a false financial affidavit for submission to the court; (3) by filing harassing and unscrupulous motions in a February 1992

court proceeding; and (4) by releasing the mortgage funds to the former husband after receiving them in escrow.

The statewide grievance committee forwarded the complaint to the Waterbury judicial district grievance panel for investigation in accordance with General Statutes § 51-90e and Practice Book § 27F. After considering the complaint and the plaintiff's response, the panel rendered a finding of probable cause to believe that the plaintiff violated Rule 3.1, prohibiting an attorney from bringing frivolous claims to the court, and Rules 3.3(a)(4), prohibiting offering evidence the lawyer knows to be false. The panel stated that it based its finding on the inaccurate financial affidavit submitted by the plaintiff's client at the 1990 court proceeding. The panel did not make any finding with respect to the complainant's other allegations; in particular, the panel did not mention the release by the plaintiff of the mortgage funds that he had been holding in escrow.

Pursuant to General Statutes § 51-90f and Practice Book § 27F, the Waterbury panel forwarded its decision finding probable cause to the defendant committee. The committee referred the case to a reviewing subcommittee chaired by Attorney (now Superior Court Judge) Lynda B. Munro. Pursuant to General Statutes § 51-90g and Practice Book 27J, the Munro reviewing committee conducted a hearing on the complainant's complaint.

Following the hearing, the Munro reviewing committee rendered a decision holding that there was insufficient evidence that the plaintiff had violated Rule 3.1 or 5 3.3, thereby reversing the panel's finding. The Munro reviewing committee did find, however, that there was probable cause to believe that the plaintiff had violated Rules 1.15 and 8.4 by releasing the escrowed mortgage funds to his client. The reviewing committee ruled, therefore, that a new hearing would be convened on those charges.

The plaintiff filed a written objection to the

convening of a new hearing, contending that the Munro reviewing committee had exceeded its authority in finding probable cause on a charge that the panel had not mentioned in its report. A different reviewing committee, chaired by Attorney Thomas Cloutier, heard oral argument on the objection and overruled it.

On November 10, 1993, the Cloutier reviewing committee conducted a hearing on the charges that the plaintiff violated Rules 1.15 and 8.4. Both the complainant and the plaintiff testified, as did Attorney Harold Bochino. Bochino was the complainant's fiance and had advised her throughout most of the events described above. In particular, he had dealt with the plaintiff in the transfer of the mortgage funds to the plaintiff in escrow. The reviewing committee also received considerable documentary evidence, including the August 1, 1992, letter from the plaintiff to Bochino concerning the escrow of the funds.

On January 14, 1994, the Cloutier reviewing

committee transmitted its proposed decision to the defendant statewide grievance committee. In the proposed decision, the Cloutier reviewing committee found that the plaintiff's testimony concerning his interpretation of his letter of August 1, 1992, was not reasonable. It further found that that letter, together with Bochino's testimony and the undisputed release of the escrowed funds by the plaintiff, constituted clear and convincing evidence that the plaintiff violated Rules 1.15 and 8.4. On February 17, 1994, the defendant committee transmitted its final decision adopting the proposed decision of the Cloutier reviewing committee and issuing a reprimand of the plaintiff. It is that decision which is the subject of this appeal.

The court has set out the history of the administrative proceedings in this case in some detail because it is the basis of the plaintiff's principal contention on appeal. He argues (1) that the Munro and Cloutier reviewing committees lacked authority to

consider the alleged violations of the Rules arising out of the release of the mortgage funds; (2) that the defendant committee abused its discretion in reprimanding the plaintiff; and (3) that the decision was barred by the rule of collateral estoppel.

The plaintiff's contention concerning the authority of the reviewing committees to consider the mortgage escrow issue is based on his interpretation of Practice Book § 27J(c). That section provides, in relevant part, as follows:

> If the grievance panel determines that probable cause exists that the respondent is guilty of misconduct, the statewide grievance committee or the reviewing committee shall hold a hearing on the complaint. If the grievance panel determines that probable cause does not exist, the statewide grievance committee or the reviewing committee shall review the determination of no probable cause, take evidence if it deems it appropriate and, if it determines that probable cause does exist, shall take the following action: . . . (2) if a reviewing committee reviewed the grievance

> panel's determination, it shall hold a hearing concerning the complaint or refer the matter to the statewide grievance committee which shall assign it to another reviewing committee to hold the hearing.

The plaintiff argues that this section means that the Munro reviewing committee was authorized to consider only the panel's finding of probable cause with respect to Rules 3.1 and 3.3, concerning the inaccurate financial affidavit. Once the reviewing committee determined that those findings could not be sustained, he argues, it could do no more than promulgate a proposed decision to dismiss the complaint under § 27J(e). In effect, the plaintiff reads the first and second sentences of § 27J(c) as mutually exclusive; that is, if the panel finds probable cause on one charge and no probable cause on others, he claims that the reviewing committee may not consider those other charges.

The plaintiff offers no authority specifically supporting his theory, and the court concludes that it

may not be sustained. In the court's view, the statewide grievance committee and the two reviewing committees acted precisely in accordance with the applicable statutory and practice book directives. As noted, the panel found probable cause as to two charges; it made no findings as to the others. Section 27J(c) provides that if the panel finds probable cause, the reviewing committee "shall hold a hearing on the complaint." Surely that language is broad enough to encompass the procedure followed in this case, where the reviewing committee heard evidence not only on the charges for which the panel found probable cause but on the other charges in the complaint, as well. That conclusion is supported by the provisions of § 27J(c) that immediately follow. They pertain to the situation where the panel does not find probable cause. Assuming that the panel's report in this case meant that the panel found no probable cause with respect to other charges in this complaint, the Munro reviewing

committee again followed the practice book requirements to the letter with respect to those other charges. It reviewed the panel's finding of no probable cause and determined for itself to the contrary that there was probable cause. It then referred the complaint to the statewide grievance committee, which in turn designated the Cloutier reviewing committee to hold a hearing on the Munro committee's findings. Although the plaintiff's brief addresses only the relevant practice book sections, the court notes that General Statutes § 51-90g contains identical provisions.

In summary, the applicable statutes and practice book provisions establish a procedure requiring a finding of probable cause, followed by a full evidentiary hearing, before the committee may ultimately find a violation of the rules. The panel, the reviewing committees, and the committee followed the procedure precisely in this case. The procedure afforded the plaintiff full due process of law.

The court's decision regarding the different duties and authority of the panel and reviewing committees under the practice book and statutory provisions, as set forth above, disposes of the plaintiff's arguments on res judicata and collateral estoppel. As indicated, the practice book and statutes required the reviewing committees to review and hold de novo hearings on the panel's determinations in this case. The doctrines of res judicata and collateral estoppel have no application in such circumstances.

The basis of the plaintiff's argument that the committee abused its discretion in reprimanding the plaintiff is that the original judgment of the court in the dissolution action provided that the mortgage funds should be released unconditionally to the former husband upon sale of the property. The Cloutier reviewing committee concluded, however, that the complainant had subsequently acquired "a reasonable interest in those funds" based on the potential threat to the alimony and

child support payments due from the former husband in the future. The committee found further that the plaintiff was aware of this interest. There was abundant clear and convincing evidence to support the committee's factual findings in this regard. The committee did not abuse its discretion, therefore, in reprimanding the plaintiff for disregarding the complaint's interests under the circumstances of this case.

The plaintiff's appeal is dismissed.

/s/ Maloney

MALONEY, J.

JOHN C. KUCEJ *v.* STATEWIDE GRIEVANCE COMMITTEE
(15446)

Callahan, C. J., and Borden, Palmer, McDonald and Peters, Js.

The plaintiff attorney appealed from the judgment of the trial court dismissing his appeal from a reprimand issued by the defendant statewide grievance committee in connection with his representation of the former husband of the complainant in the dissolution of the parties' marriage. The complainant alleged that the plaintiff had violated the Rules of Professional Conduct by advising his client to suspend his alimony and support payments, by submitting an inaccurate financial affidavit to the court, by filing harassing and unscrupulous motions, and by releasing certain mortgage funds to his client contrary to his representation to the complainant's attorney that he would hold those funds in escrow

until resolution of certain motions pending between the parties. A local grievance panel determined that there was probable cause to believe that the plaintiff's submission of the inaccurate financial affidavit constituted a violation of two rules, but it made no findings with respect to the other allegations. The statewide grievance committee referred the local panel's findings to a reviewing committee, which determined that the evidence did not establish probable cause that the submission of the inaccurate financial affidavit constituted a violation but that the release of the mortgage funds did constitute a violation of two other rules. A second reviewing committee conducted a hearing and issued a proposed decision concluding that there was clear and convincing evidence that the release of the mortgage funds violated the Rules of Professional Conduct and recommending that the plaintiff be reprimanded. The statewide grievance committee adopted that decision. *Held:*

1. The plaintiff could not prevail on his claim that the first reviewing committee exceeded its authority in reviewing what the parties agreed constituted determinations by the local grievance panel of no probable cause with respect to the release of the mortgage funds, there being no support in the record for the plaintiff's claim that the statewide grievance committee itself had reviewed the merits of the local panel's findings before forwarding them to the reviewing committee; for similar reasons, there was no foundation for the plaintiff's claim that the first reviewing committee was precluded by principles of res judicata and collateral estoppel from considering the local panel's findings of no probable cause.
2. The plaintiff failed to establish that he was prejudiced, in violation of his rights to procedural due process, by the fact that the notice he received led him to believe that the first reviewing committee would not be considering what amounted to findings of no probable cause by the local panel.
3. The trial court properly determined that the facts found by the second reviewing committee and adopted by the statewide grievance committee were supported by clear and convincing evidence and that their conclusions were legally and logically correct.

Argued September 27—officially released December 17, 1996

Appeal from a reprimand issued by the defendant for the plaintiff's alleged violation of the Rules of Professional Conduct, and for other relief, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford and tried to the court, *Maloney, J.*; judgment for the defendant dismissing the appeal; thereafter, the court denied the plaintiff's motion to reargue and the plaintiff appealed. *Affirmed.*

Roger J. Frechette, with whom was *Matthew E. Frechette*, for the appellant (plaintiff).

Daniel B. Horwitch, statewide bar counsel, for the appellee (defendant).

PALMER, J. The plaintiff, John C. Kucej, an attorney, appeals from the judgment of the trial court dismissing his appeal from the reprimand issued to him by the defendant, the statewide grievance committee.[1] The plaintiff challenges the trial court's determination that the defendant properly concluded that he had violated rules 1.15 and 8.4 of the Rules of Professional Conduct.[2] We affirm the judgment of the trial court.

The relevant facts are undisputed. The plaintiff represented Charles G. Berdan (Berdan) in a marital dissolution action against the complainant in this case, Susan M. Berdan (complainant). In 1989, the trial court, *W. Sullivan, J.*, rendered judgment in that action dissolving the marriage and requiring Berdan to quitclaim his interest in the marital residence to the complainant. The

[1] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 4023 and General Statutes § 51-199 (c).

[2] The professional rights and obligations of attorneys practicing within Connecticut are governed by the Rules of Professional Conduct, which were adopted in 1986 by the judges of the Superior Court. *Statewide Grievance Committee* v. *Shluger*, 230 Conn. 668, 674 n.11, 646 A.2d 781 (1994). Rule 1.15 of the Rules of Professional Conduct, which regulates the safekeeping of property by an attorney, provides in relevant part: "(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property."

Rule 8.4 of the Rules of Professional Conduct, which enumerates proscribed attorney conduct, provides in relevant part: "It is professional misconduct for a lawyer to . . . (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . ."

complainant, in turn, was required to give Berdan a note secured by a second mortgage on the marital home in the amount of $90,000 (mortgage funds), the note and mortgage to be paid upon the complainant's sale of the property. The judgment also required Berdan to pay periodic alimony and child support to the complainant.

In 1990, the complainant filed a motion for contempt after Berdan had stopped making his alimony and child support payments. Thereafter, Berdan filed a motion for modification of the marital dissolution judgment. The trial court found Berdan to be in contempt and ordered him to pay the accrued arrearage. In addition, the court, relying on a financial affidavit attested to by Berdan that significantly understated his income, reduced Berdan's future alimony and child support payments.

On July 17, 1992, the complainant sold the marital residence without first notifying Berdan. Because the complainant had learned that Berdan was experiencing employment difficulties and was planning to leave Connecticut, she did not pay over the mortgage funds to Berdan but, rather, had those funds held in escrow by the buyer's attorney. Upon learning of the sale of the home, Berdan filed a motion seeking an order of contempt against the complainant for her failure to release to him the funds due on the note. In response, the complainant moved for an order requiring that the mortgage funds be held in escrow as security for Berdan's future support obligations and, in addition, that those funds not be paid to Berdan until further order of the court.

The parties' motions were scheduled for a court hearing on August 3, 1992. On August 1, 1992, however, the plaintiff delivered a letter to the complainant's attorney, Harold Bochino, requesting payment but agreeing to

hold the mortgage funds in escrow until a resolution of the parties' motions.[3] The hearing on the motions did not go forward on August 3, but Bochino, in reliance on the plaintiff's representation that he would hold the mortgage funds in escrow until the parties' motions had been resolved, caused the funds to be turned over to the plaintiff. Shortly thereafter, however, and prior to any resolution of the pending motions, the plaintiff released the mortgage funds to Berdan.

On November 12, 1992, the complainant filed a complaint with the defendant alleging that the plaintiff had violated the Rules of Professional Conduct by wrongfully advising Berdan to suspend his alimony and support payments, submitting Berdan's inaccurate financial affidavit to the court, filing harassing and unscrupulous motions, and releasing the mortgage funds to Berdan contrary to his representation that he would hold those funds in escrow until resolution of the parties' motions. The defendant forwarded the complaint to the grievance panel for the Waterbury judicial district (local panel).[4]

After considering the complaint and the plaintiff's written response,[5] the local panel concluded that there

[3] The relevant portion of the plaintiff's letter provides: "Please be advised that I will be meeting you at 10:00 a.m. on Monday, August 3, 1992, in Danbury Superior Court. I will mark the case at 9:30 a.m. I am sure that our clients, you and I, will be able to resolve this matter. Please have net check for my client which I will hold in escrow until this matter is resolved. Monday I will be in a position to discuss child support and alimony."

[4] "Each judicial district has one or more grievance panels. A grievance panel consists of two members of the bar and one layperson, all of whom are appointed by the Superior Court. General Statutes § 51-90b. A grievance panel investigates and determines whether probable cause exists for all complaints referred to [it] by the statewide grievance committee or the statewide bar counsel. General Statutes § 51-90f." *Lewis* v. *Statewide Grievance Committee*, 235 Conn. 693, 696 n.5, 669 A.2d 1202 (1996); see also Practice Book § 27B (a).

[5] The local panel did not conduct a hearing on the complainant's allegations. Although a local panel has the authority to compel testimony and document production; see Practice Book § 27B (d) (2); it is not required to

was probable cause to believe that the plaintiff's submission of Berdan's inaccurate financial affidavit constituted a violation of rules 3.1 and 3.3 (a) (4) of the Rules of Professional Conduct.[6] The local panel, however, made no findings with respect to the complainant's other allegations, including her claim that the plaintiff had improperly released the mortgage funds to Berdan.[7]

The local panel forwarded its findings to the defendant as required by Practice Book § 27F (g) and General Statutes § 51-90f.[8] The defendant, in accordance with

conduct a hearing prior to deciding whether probable cause exists that an attorney is guilty of misconduct. See *Statewide Grievance Committee* v. *Presnick*, 215 Conn. 162, 169–70, 575 A.2d 210 (1990).

[6] Rule 3.1 of the Rules of Professional Conduct provides: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established."

Rule 3.3 of the Rules of Professional Conduct provides in relevant part: "(a) A lawyer shall not knowingly . . . (4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures."

[7] The local panel's notice to the plaintiff informing him that it had found probable cause that his submission of Berdan's inaccurate financial affidavit violated the Rules of Professional Conduct contained no mention of the complainant's three other charges of impropriety, including the plaintiff's alleged mishandling of the mortgage funds. The parties, however, agree that the local panel's failure to make any express findings with respect to those remaining allegations constituted a determination of no probable cause as to those claims.

[8] Practice Book § 27F (g) provides: "The panel shall, within ninety days from the date the complaint was referred to it, file the following with the statewide grievance committee: its written determination concerning whether probable cause exists that the respondent is guilty of misconduct, a copy of the complaint and response, a transcript of any testimony heard by the panel, a copy of any investigatory file and copies of any documents, transcripts or other written materials which were available to the panel. These materials shall constitute the panel's record in the case. The panel may file a motion for extension of time not to exceed thirty days with the statewide grievance committee which may grant the motion only upon a finding of good cause. If the panel does not complete its action on a complaint

Practice Book § 27J (a) and General Statutes § 51-90g (a),[9] referred the case to a reviewing committee chaired by Lynda Munro (Munro reviewing committee)[10] for a hearing pursuant to § 27J (c) and § 51-90g (a).[11] At the conclusion of that hearing, the Munro reviewing committee found that the evidence failed to establish that the plaintiff's submission of Berdan's financial affidavit constituted a violation of rules 3.1 and 3.3 of the Rules of Professional Conduct. The Munro reviewing committee concluded, however, that there was probable cause to believe that the plaintiff's release of the mortgage funds to Berdan constituted a violation of rules 1.15 and 8.4 of the Rules of Professional Conduct. See footnote 2.

within the time provided in this rule, the statewide grievance committee shall inquire into the delay and shall order that the panel take action on the complaint forthwith, or order that the complaint be forwarded to and heard by another panel or a reviewing committee designated by the statewide grievance committee."

General Statutes § 51-90f contains substantially similar provisions.

[9] Practice Book § 27J (a) provides in relevant part: "Upon receipt of the record from a grievance panel, the statewide grievance committee may assign the case to a reviewing committee which shall consist of at least three members of the statewide grievance committee, at least one third of whom are not attorneys."

General Statutes § 51-90g (a) contains substantially similar provisions.

[10] At the time, Munro was a practicing attorney. She is currently a judge of the Superior Court.

[11] Practice Book § 27J (c) provides: "If the grievance panel determines that probable cause exists that the respondent is guilty of misconduct, the statewide grievance committee or the reviewing committee shall hold a hearing on the complaint. If the grievance panel determines that probable cause does not exist, the statewide grievance committee or the reviewing committee shall review the determination of no probable cause, take evidence if it deems it appropriate and, if it determines that probable cause does exist, shall take the following action: (1) if the statewide grievance committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or assign the matter to a reviewing committee to hold the hearing; or (2) if a reviewing committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or refer the matter to the statewide grievance committee which shall assign it to another reviewing committee to hold the hearing. All hearings following a determination of probable cause shall be public and on the record."

General Statutes § 51-90g (a) contains substantially similar provisions.

The Munro reviewing committee notified the plaintiff that a hearing would be held on those charges at a later date.

The plaintiff filed a written objection to the Munro reviewing committee's probable cause finding. The basis of the objection was that the Munro reviewing committee had exceeded its authority in reviewing the local panel's determination of no probable cause. The defendant overruled the plaintiff's objection and notified the plaintiff that his failure to hold the mortgage funds in escrow would be the subject of a hearing before a second reviewing committee chaired by attorney Thomas Cloutier (Cloutier reviewing committee).[12]

On November 10, 1993, the Cloutier reviewing committee conducted a hearing on the complainant's allegation that the plaintiff had improperly released the mortgage funds to Berdan. The plaintiff, the complainant and her counsel, Bochino, testified at the hearing. On January 14, 1994, the Cloutier reviewing committee issued a proposed decision in which it concluded that there was clear and convincing evidence that the plaintiff had released the mortgage funds in violation of rules 1.15 and 8.4 of the Rules of Professional Conduct. The Cloutier reviewing committee recommended that the plaintiff be reprimanded. After considering the plaintiff's objections to the proposed decision, the defendant voted to adopt that decision and, accordingly, issued a reprimand to the plaintiff.

The plaintiff appealed from the defendant's decision to the Superior Court, claiming that: (1) the Munro reviewing committee exceeded its authority in reviewing the local panel's finding of no probable cause regarding his release of the mortgage funds to Berdan; (2) the reprimand was barred by principles of res judi-

[12] No member of the Cloutier reviewing committee had been a member of the Munro reviewing committee.

cata and collateral estoppel; (3) the reprimand violated his federal constitutional rights to due process; and (4) the defendant abused its discretion in concluding that his release of the mortgage funds constituted a violation of rules 1.15 and 8.4 of the Rules of Professional Conduct. The trial court, *Maloney, J.*, rejected these claims and dismissed the plaintiff's appeal. On appeal to this court, the plaintiff renews each of the claims he raised in the trial court. Because we agree with the trial court that those claims are without merit, we affirm the trial court's judgment.

I

The plaintiff first claims that the Munro reviewing committee lacked authority to consider the local panel's finding of no probable cause with respect to his release of the mortgage funds. We disagree.

The plaintiff's claim is predicated on two Practice Book provisions: § 27J (c),[13] which provides that either the defendant *or* a reviewing committee shall review a determination of no probable cause by a local panel; and § 27J (i),[14] which authorizes dismissal of the complaint by the defendant if, upon its direct review of a local panel's findings of no probable cause, it concurs with the local panel's determination. The plaintiff maintains that, in this case, the defendant, upon receipt of

[13] Practice Book § 27J (c) also provides that either the defendant or a reviewing committee shall conduct a public hearing on any determination of probable cause by a local panel. See footnote 11.

[14] Practice Book § 27J (i) provides: "If the statewide grievance committee does not assign a complaint to a reviewing committee, it shall have one hundred and twenty days from the date the panel's determination concerning probable cause was filed with it to render a decision dismissing the complaint, imposing sanctions and conditions as authorized by Sec. 27M.1 or directing the statewide bar counsel to file a presentment against the respondent. The decision shall be a matter of public record. The failure of the reviewing committee to complete its action on a complaint within the period of time provided in this section shall not be cause for dismissal of the complaint."

the local panel's findings, (1) referred the local panel's *probable cause* findings to the Munro reviewing committee for that committee's initial review and, at the same time, (2) conducted its own direct review of the local panel's *no probable cause* findings, concluding that the no probable cause findings were proper. On the assumption that the defendant had itself reviewed and approved the local panel's no probable cause findings, the plaintiff maintains that the Munro reviewing committee exceeded its authority in reviewing the local panel's findings of no probable cause and substituting its finding of probable cause with regard to the plaintiff's release of the mortgage funds.[15]

The plaintiff's claim fails because it is factually unsupported. The administrative record is devoid of persuasive evidence indicating that the defendant reviewed the merits of the local panel's findings of no probable cause or, indeed, that it took any action on the local panel's findings other than to forward them to the Munro reviewing committee for review. Furthermore,

[15] We note that the trial court understood the plaintiff's claim to be a purely legal one, characterizing it as follows: "In effect, the plaintiff reads the first and second sentences of § 27J (c) as mutually exclusive; that is, if the [local] panel finds probable cause on one charge and no probable cause on others, he claims that the reviewing committee may not consider those charges." In rejecting the plaintiff's argument, the trial court, therefore, did not address the issue of whether the Munro reviewing committee lacked authority to review the local panel's no probable cause findings for the sole reason urged by the plaintiff on appeal, namely, that the defendant had itself reviewed and approved the local panel's findings of no probable cause. Although the plaintiff filed a motion for reargument in which he sought to explain that he had, in fact, made the claim in the trial court that he now articulates on appeal, the trial court denied the plaintiff's motion, and the plaintiff never sought an articulation under Practice Book § 4051. Accordingly, the trial court made no specific factual findings regarding the issue of whether the defendant had already reviewed and approved the local panel's no probable cause findings prior to referring the complaint to the Munro reviewing committee. We nevertheless consider the plaintiff's claim as he has framed it on appeal because the statewide bar counsel has not objected to our doing so.

the defendant's decision to adopt the Cloutier reviewing committee's recommendation that the plaintiff be reprimanded for violating rules 1.15 and 8.4 of the Rules of Professional Conduct belies the plaintiff's claim that the defendant had earlier concluded that no probable cause existed for that violation.[16]

The evidence upon which the plaintiff primarily relies to support his claim is an informational enclosure that accompanied the letter sent to him by the statewide bar counsel notifying him of the date and time of the hearing before the Munro reviewing committee.[17] The enclosure, which consisted of several explanatory paragraphs describing the procedures to be followed by the reviewing committee, included the following representations: "The subject for review at the hearing will only be the issue or issues related to the probable cause finding. Please refer to the letter issued either by the grievance panel or [by] the Statewide Grievance Committee setting forth the probable cause finding. The probable cause finding may not include every allegation of misconduct made in the complaint. If a particular claim of misconduct did not result in a finding of probable cause, that claim will not be considered by the reviewing committee, nor will testimony be accepted on that claim."[18] The plaintiff claims that these statements

[16] Because the plaintiff did not clearly articulate this claim in the trial court; see footnote 15; neither the plaintiff nor the statewide bar counsel sought to establish whether the defendant conducted any substantive review of the local panel's findings of no probable cause before forwarding the case to the Munro reviewing committee. The statewide bar counsel maintains, however, that the defendant did not order a bifurcated review of the local panel's findings but, rather, referred all of the local panel's findings—including its findings of no probable cause—to the Munro reviewing committee.

[17] In his brief, the statewide bar counsel describes the enclosure as a boilerplate "informational insert" used by the defendant to provide respondent attorneys with general information about the procedures employed by reviewing committees of the defendant. We have no reason to reject this representation.

[18] The plaintiff also asserts that he was advised by chairperson Munro at the commencement of the reviewing committee's hearing that the scope of

conclusively establish that the defendant had reviewed and approved the local panel's no probable cause findings prior to referring the complaint to the Munro reviewing committee because otherwise there would be no reason for him to have received notification that the reviewing committee would not consider the local panel's no probable cause findings.[19] On the basis of this construction of the enclosure, the plaintiff concludes that because the defendant had itself already conducted a final review of the local panel's no probable cause findings, the Munro reviewing committee lacked the authority to do so.

As the statewide bar counsel acknowledged in oral argument, the representations in the informational enclosure were misleading insofar as they suggested that the Munro reviewing committee would take no action regarding the local panel's no probable cause findings, and we disapprove of them for that reason.[20] The enclosure to the statewide bar counsel's letter, however, does not compel the conclusion that the defendant actually reviewed the local panel's finding

that hearing would be limited to the probable cause findings of the local panel. Although a transcript of the proceedings before the Munro reviewing committee has not been made part of the record on appeal, the statewide bar counsel does not dispute this assertion.

[19] The plaintiff also asserts that his claim is supported by the local panel's representation, contained in its letter to the plaintiff notifying him of its probable cause determination, that his "file has been forwarded to the [defendant] for its *review*, and that [the defendant] will contact you directly." (Emphasis added.) The plaintiff, however, reads too much into the local panel's use of the term "review." The local panel was required to forward its file and findings to the defendant; see Practice Book § 27F (g); so that the defendant could decide whether to conduct a substantive review of the local panel's findings or, instead, to refer the findings to a reviewing committee. See Practice Book § 27J (a). Because the local panel's letter neither states nor implies anything more, we reject the plaintiff's contention that it provides support for his claim.

[20] At oral argument, the statewide bar counsel indicated that the misleading language will be deleted from future correspondence regarding hearings before a reviewing committee.

of no probable cause relating to the mortgage funds and dismissed those charges prior to forwarding the complaint to the Munro reviewing committee.[21] In the absence of any evidence in the record indicating that the defendant in fact reviewed any of the local panel's findings before forwarding the matter to the Munro reviewing committee, we reject the plaintiff's claim that that committee exceeded its authority in conducting such a review.

II

The plaintiff also claims that the Munro reviewing committee was precluded by principles of res judicata and collateral estoppel from considering the local panel's findings of no probable cause.[22] Specifically, the plaintiff asserts that because the defendant had already reviewed the local panel's determination of no probable cause prior to forwarding the complaint to the Munro reviewing committee, the Munro reviewing committee's review of the local panel's findings was redundant and contrary to our judicial system's recognized interest in minimizing repetitive litigation. We have already rejected the plaintiff's contention, however, that the defendant reviewed and approved the local panel's no probable cause findings before referring the complaint to the Munro reviewing committee.[23] The factual premise underlying the plaintiff's claim, therefore, is without foundation.

[21] On appeal, the statewide bar counsel asserts that the challenged representations were not intended to convey the impression that the Munro reviewing committee would refrain from reviewing the local panel's findings of no probable cause but, rather, that those findings would not be the subject of any argument or testimony at the hearing.

[22] We have previously noted that basic concepts of res judicata are generally applicable to presentment proceedings. See *Statewide Grievance Committee* v. *Presnick*, 216 Conn. 135, 139, 577 A.2d 1058 (1990).

[23] We need not determine, therefore, whether principles of res judicata or collateral estoppel would otherwise have been applicable to the circumstances of this case.

III

The plaintiff next maintains that his federal due process rights were violated because the notice he received from the statewide bar counsel concerning the scope of the hearing before the Munro reviewing committee caused him reasonably to believe that that committee would not review the local panel's findings of no probable cause,[24] thereby depriving him of a meaningful opportunity to contest the complainant's allegation that he had improperly released the mortgage funds.[25] We disagree.

Because a license to practice law is a vested property interest and disciplinary proceedings are "adversary proceedings of a quasi-criminal nature," an attorney subject to discipline is entitled to due process of law. *In re Ruffalo*, 390 U.S. 544, 551, 88 S. Ct. 1222, 20 L. Ed. 2d 117, modified on other grounds, 392 U.S. 919, 88 S. Ct. 2257, 20 L. Ed. 2d 1380 (1968); *Statewide Grievance Committee* v. *Botwick*, 226 Conn. 299, 306, 627 A.2d 901 (1993). The determination of the particular process that is due depends on the nature of the proceeding and the interests at stake. *Goldberg* v. *Kelly*, 397 U.S. 254, 268–69, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). "In attorney disciplinary proceedings, two interests are of paramount importance. On the one hand, we must not tie the hands of grievance committees and trial courts with procedural requirements so strict that it becomes virtually impossible to discipline an attorney for any but the most obvious, egregious and public misconduct. On the other hand, we must ensure that attorneys subject to disciplinary action are afforded the

[24] As we have already noted, chairperson Munro also indicated that the local panel's findings of no probable cause would not be the subject of the hearing before her reviewing committee.

[25] We note that the plaintiff failed to raise this claim in the trial court. Because the statewide bar counsel has not objected to our consideration of the claim, however, we address it.

full measure of procedural due process required under the constitution so that we do not unjustly deprive them of their reputation and livelihood." *Statewide Grievance Committee* v. *Botwick*, supra, 307.

Generally, "[b]efore discipline may be imposed, an attorney is entitled to notice of the charges, a fair hearing and an appeal to court for a determination of whether he or she has been deprived of these rights in some substantial manner. . . ." (Citations omitted; internal quotation marks omitted.) Id., 308. Notice of the nature of the charges must be reasonable and the attorney must be apprised of them before the proceedings commence. Id. If sufficient notice is not provided, attorney grievance proceedings can "become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh." *In re Ruffalo*, supra, 390 U.S. 551.[26]

With these principles in mind, we turn to the plaintiff's claim that his due process rights were violated because he had been led to understand that he would not have to defend against those charges for which the local panel had not found probable cause. Although we acknowledge that it was reasonable for the plaintiff to have believed that the Munro reviewing committee would not be reviewing the local panel's no probable cause findings, the plaintiff nevertheless points to no evidence—and our careful review of the record has revealed none—tending to establish that he was prejudiced as a result of that misunderstanding. In conducting its review of the local panel's findings, the Munro reviewing committee was not required to afford the

[26] This rule is not applicable where an attorney's conduct is malum in se, because a reasonably prudent attorney would know that such behavior was actionable. *Statewide Grievance Committee* v. *Botwick*, supra, 226 Conn. 308 n.9.

plaintiff an evidentiary hearing by any statutory or Practice Book provision. See General Statutes § 51-90g (a); Practice Book § 27J (c).[27] More importantly, however, the plaintiff was afforded a full and fair opportunity to challenge the Munro reviewing committee's probable cause findings before a second reviewing committee comprised of a different group of the defendant's members. In light of the fact that the plaintiff was afforded a de novo hearing by the Cloutier reviewing committee and, thereafter, a review of that committee's proposed decision by all of the defendant's members, the plaintiff has failed to establish that he was in any way prejudiced by the Munro reviewing committee's consideration of the local panel's findings of no probable cause.[28] See *Statewide Grievance Committee* v. *Shluger*, supra, 230 Conn. 677; *Statewide Grievance Committee* v. *Rozbicki*, 219 Conn. 473, 484, 595 A.2d 819 (1991), cert. denied, 502 U.S. 1094, 112 S. Ct. 1170, 117 L. Ed. 2d 416

[27] The plaintiff has not challenged the constitutionality of the provisions of § 51-90g (a) and § 27J (c) authorizing the defendant and its reviewing committees to reverse a local panel's finding of no probable cause without affording the respondent attorney a hearing. Cf. *Statewide Grievance Committee* v. *Presnick*, 215 Conn. 162, 169–70, 575 A.2d 210 (1990).

[28] The plaintiff argues that because he testified at the hearing before the Munro reviewing committee without knowledge that it would be reviewing the local panel's no probable cause findings, any testimony that he gave at that hearing concerning his release of the mortgage funds could have been used against him by the Munro reviewing committee or the Cloutier reviewing committee. The record on appeal contains no transcript of the plaintiff's testimony before the Munro reviewing committee, however, and the plaintiff has not otherwise attempted to establish that he did in fact testify about the mortgage funds at that hearing. Indeed, because the plaintiff failed to raise this claim in the trial court; see footnote 25; neither party sought to adduce any evidence with regard to this claim. Furthermore, even if the plaintiff did testify about the mortgage funds at the hearing before the Munro reviewing committee, he has made no showing whatsoever that any such testimony was considered by either reviewing committee. In fact, our review of the record has failed to reveal any indication that the Cloutier reviewing committee had any such testimony before it. Cf. *In re Ruffalo*, supra, 390 U.S. 551–52 (violation of procedural due process where presentment amended solely on basis of attorney's testimony at disciplinary proceeding).

(1992). Thus, this is not a case wherein the plaintiff's procedural due process rights were violated because he was required to defend himself against charges of which he had not received adequate notice. Cf. *Statewide Grievance Committee* v. *Botwick*, supra, 226 Conn. 311 (violation of procedural due process where presentment did not provide notice of offense for which attorney sanctioned). Accordingly, we reject the plaintiff's constitutional claim.

IV

The plaintiff's final claim is that the Cloutier reviewing committee and the defendant could not reasonably have concluded that the plaintiff's release of the mortgage funds to Berdan violated rules 1.15 and 8.4 of the Rules of Professional Conduct.[29] We disagree.

Before addressing the plaintiff's claim, we note the limited scope of our review as prescribed by Practice Book § 27N (f): "Upon appeal, the court shall not substi-

[29] The proposed decision of the Cloutier reviewing committee, which the defendant adopted, provides in relevant part: "By obtaining the funds in which his client had an interest from Attorney Bochino through the use of his August 1, 1992 letter and subsequently disbursing those funds to his client when he knew the [c]omplainant had a reasonable interest in those funds, the [plaintiff] violated Rule 1.15 (b) of the Rules of Professional Conduct. By advising Attorney Bochino that the [plaintiff] would maintain the funds in escrow until the issue of the funds was resolved and thereafter disbursing the funds to his client, the [plaintiff] violated the misrepresentation provision of Rule 8.4 (c) of the Rules of Professional Conduct. We do not find reasonable the [plaintiff's] interpretation of his letter that he intended to convey that he would only hold the funds for the next two days unless the court acted on his and Attorney Bochino's motions. It is our opinion that the only reasonable interpretation of the letter is that the [plaintiff] would safeguard the funds until the parties were able to resolve the dispute among themselves or until the court acted on either the [plaintiff's m]otion [f]or [c]ontempt or the [complainant's m]otion [f]or [s]ecurity. Given the [c]omplainant's concerns about the money in question, as evidence[d] by her [m]otion [f]or [s]ecurity, we do not find it reasonable that the [plaintiff] would expect the money would be released to him under the terms he asserts were intended to be set forth in his letter."

tute its judgment for that of the statewide grievance committee as to the weight of the evidence on questions of fact. The court shall affirm the decision of the committee unless the court finds that substantial rights of the respondent have been prejudiced because the committee's findings, inferences, conclusions, or decisions are: (1) In violation of constitutional, Practice Book or statutory provisions; (2) in excess of the authority of the committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. . . ." "Thus, in reviewing a decision of the statewide grievance committee to issue a reprimand, neither the trial court nor this court takes on the function of a fact finder. Rather, our role is limited to reviewing the record to determine if the facts as found are supported by the evidence contained within the record and whether the conclusions that follow are legally and logically correct. . . ." (Citation omitted; internal quotation marks omitted.) *Weiss* v. *Statewide Grievance Committee*, 227 Conn. 802, 812, 633 A.2d 282 (1993).

Applying these principles to this case, we conclude that the trial court properly determined that the facts found by the Cloutier reviewing committee and adopted by the defendant are supported by clear and convincing evidence, and that their conclusions are legally and logically correct. As the trial court concluded, the Cloutier reviewing committee reasonably determined that the plaintiff's release of the mortgage funds to Berdan was contrary to the plaintiff's express, written representation that he would hold those funds in escrow until the parties' motions had been resolved. Under these circumstances, the plaintiff's misrepresentation violated rules 1.15 and 8.4 of the Rules of Professional

Conduct.[10] Accordingly, the plaintiff's challenge to the reprimand issued by the defendant for that conduct is without merit.

The judgment is affirmed.

In this opinion the other justices concurred.

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[10] The plaintiff maintains that he was obligated to release the mortgage funds to his client under the terms of the marital dissolution judgment. As the trial court stated, however, "[t]he Cloutier reviewing committee concluded . . . that the complainant had subsequently acquired 'a reasonable interest in those funds' based on the potential threat to the alimony and child support payments due from [Berdan] in the future. [That] committee found further that the plaintiff was aware of this interest. There was abundant clear and convincing evidence to support [that] committee's factual findings in this regard. The [defendant] did not abuse its discretion, therefore, in reprimanding the plaintiff for disregarding the complainant's interests under the circumstances of this case."

STATE OF CONNECTICUT

SUPREME COURT

No. SC 15446

JOHN C. KUCEJ

v.

STATEWIDE GRIEVANCE COMMITTEE

January 16, 1997

O R D E R

THE MOTION OF THE PLAINTIFF, FILED DECEMBER 23, 1996, FOR REARGUMENT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY O R D E R E D DENIED.

BY THE COURT,

/s/ Francis J. Drumm, Jr.
CHIEF CLERK

NOTICE SENT: JANUARY 17, 1997
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CLERK, HARTFORD J.D. (CV94-0535526S)
HON. JOHN P. MALONEY
RJD

ct 157

No. 96-1666

Supreme Court, U.S.
FILED
MAY 15 1997
OFFICE OF THE CLERK

In The
Supreme Court Of The United States
October Term, 1996

JOHN C. KUCEJ,
Petitioner,

v.

STATEWIDE GRIEVANCE COMMITTEE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

BRIEF OF THE RESPONDENT IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent Statewide Grievance Committee respectfully requests that this Court deny the Petition for Writ of Certiorari of John C. Kucej which seeks review of the judgment and opinion of the Connecticut Supreme Court in this case.

STATEMENT OF THE CASE

The petitioner John C. Kucej has brought a petition for writ of certiorari asking this court to review the judgment of the Connecticut Supreme Court in *Kucej v. Statewide Grievance Committee*, 239 Conn. 449 (1996). This case held that the Statewide Grievance Committee did not violate the due process rights of the petitioner, an attorney, in imposing a public reprimand for attorney misconduct.

A complaint against the petitioner alleging attorney misconduct was filed with the statewide bar counsel on November 11, 1992. The complaint was investigated in accordance with the Connecticut rules of court. On February 17, 1994, the Statewide Grievance Committee reprimanded the petitioner for misconduct.

In March, 1994, the petitioner filed an appeal of the Statewide Grievance Committee reprimand in the Connecticut Superior Court. The petitioner claimed, *inter alia*, that the decision of the Statewide Grievance Committee to reprimand for actions upon which a local grievance panel originally found no probable cause of misconduct was barred by the doctrines of res judicata, collateral estoppel and

double jeopardy. After oral argument, the Superior Court issued its decision in December, 1995, finding that the Statewide Grievance Committee did not violate the petitioner's rights. The petitioner filed a motion to reargue which was denied by the Superior Court.

The petitioner timely appealed the judgment of the Superior Court to the Connecticut Appellate Court and on June 13, 1996, the Connecticut Supreme Court transferred the appeal to itself, pursuant to its authority under Connecticut General Statutes §51-199[1] and Connecticut Rules of Practice §4023. On December 17, 1996, the Connecticut Supreme Court affirmed the judgment of the trial court holding that the Statewide Grievance Committee did not violate the due process rights of the petitioner or pursue matters barred by res judicata or collateral estoppel. *Kucej v. Statewide Grievance Committee*, 239 Conn. 449 (1996). On December 23, 1996, the petitioner filed a motion for reargument. On January 16, 1997, the Connecticut Supreme Court denied the petitioner's motion.

REASONS FOR DENYING THE WRIT

The Petition raises no issue that warrants review. No significant or unsettled question of federal law is presented that has not already been settled by this Court. The

[1]Connecticut General Statutes §51-199(c) provides in part that "[t]he Supreme Court may transfer to itself a cause in the Appellate Court.

Decision of the Connecticut Supreme Court is correct on the merits as to issues raised by this petition. It is not contrary to any applicable decisions of this Court.

ARGUMENT

The decision of the Connecticut Supreme Court does not conflict with *In re Ruffalo*, 390 U.S. 544 (1968) and does not subject an attorney in a disciplinary proceeding to double jeopardy.

The attorney discipline process in Connecticut, in cases of misconduct not warranting court action, is essentially a three-stage process. A complaint, after it is filed with the statewide bar counsel, Connecticut Practice Book Section (hereinafter "P.B. §") 27F(a) is first reviewed by a local grievance panel to determine whether probable cause exists that the attorney is guilty of misconduct. P.B. §27F(f). After the panel makes its determination, the case is assigned to a subcommittee of the Statewide Grievance Committee. P.B. §27J(a). If there has been a finding of probable cause by the local panel, the subcommittee of the Statewide Grievance Committee conducts a hearing and issues a proposed decision. The proposed decision is then reviewed by the full Statewide Grievance Committee. If the local panel finds no probable cause of misconduct, the subcommittee of the Statewide Grievance Committee reviews the finding and if it agrees that there is no probable cause, it may dismiss the complaint; if it disagrees with the local panel, it may find that there does exist probable cause of misconduct and conduct a hearing (the hearing may be conducted by a different subcommittee), after which a

proposed decision is issued and subsequently reviewed by the full Statewide Grievance Committee. P.B. §§27J(c), (e); 27M.

In the instant matter the complaint against the petitioner contained essentially four claims of misconduct. The complaint was assigned to a local grievance panel to conduct an investigation and render a determination whether there existed probable cause that the petitioner was guilty of misconduct. The grievance panel filed with the Statewide Grievance Committee its determination that there existed probable cause that the petitioner was guilty of misconduct relative to two claims in the complaint. The determination of the panel was silent with respect to the other two claims.

The Statewide Grievance Committee assigned the file to a subcommittee. The subcommittee scheduled a hearing to address the grievance panel's finding of probable cause. After conducting the hearing, the reviewing committee issued a decision that there did not exist clear and convincing evidence of misconduct on the two claims upon which the grievance panel found probable cause. In its decision, the subcommittee also announced it found probable cause of misconduct on one of the two claims not addressed by the local grievance panel and not the subject of the subcommittee's hearing.

The finding of probable cause of misconduct by the subcommittee was the subject of a hearing by a second subcommittee of the Statewide Grievance Committee. After its hearing, the second subcommittee concluded that there existed clear and convincing evidence that the petitioner was guilty of misconduct.

In his petition, the petitioner misstates the facts of this case. The petitioner states that the claims upon which the local panel found no probable cause of misconduct were reviewed and dismissed by the full Statewide Grievance Committee. There is no evidence supporting the petitioner's claim that, before it assigned the file to a subcommittee, the Statewide Grievance Committee reviewed and dismissed those portions of the complaint upon which the local panel found no probable cause of misconduct. (The petitioner's only support for his claim appears on page 11 of his petition where he cites to a *nonexistent* page 67 of his Appendix). In fact, as the Connecticut Supreme Court found, the entire file of the complaint was assigned to a subcommittee which had the authority, which it properly exercised, to both conduct a hearing on the local panel's finding of probable cause of misconduct on two claims and to review the local panel's finding of no probable cause on the remaining claims. The court concluded that the Practice Book Sections providing for a subcommittee reviewing a local grievance panel's finding of no probable cause of misconduct and conducting a hearing on the local grievance panel's findings of probable cause of misconduct were not mutually exclusive.

Supporting the conclusion of the Connecticut Supreme Court is the hearing notice mailed to the petitioner, referenced by the petitioner (Petition at 10) and reproduced in petitioner's appendix (Pet. App. 3). Significant is the heading of the document, "GRIEVANCE *HEARING*" (emphasis added) and language contained therein: "The subject for review *at the hearing* will only be the issue or issues related to the probable cause finding." (Emphasis added). As the Connecticut Supreme Court concluded, the hearing notice limited the hearing to issues on which there had been a finding of probable cause of misconduct and did

not preclude a separate review by the subcommittee of the claims upon which the local panel found no probable cause of misconduct. *Kucej v. Statewide Grievance Committee*, *supra* 457-461.

In finding probable cause on claims on which the local grievance panel did not find probable cause, the subcommittee of the Statewide Grievance Committee did not violate the petitioner's rights as defined in *In re: Ruffalo*, *supra*. Although the subcommittee had conducted a hearing on the grievance complaint, that hearing focused only on the local grievance panel's findings of probable cause and not on the issues upon which the local grievance panel determined that there was no probable cause of misconduct. Thus, the subcommittee's finding of probable cause was not a result of testimony elicited from or offered by the petitioner at its hearing and the petitioner was not trapped by his testimony. *See*, *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 655 (1985). The Connecticut Supreme court specifically noted that the record of the disciplinary proceedings contained no evidence that the petitioner testified at the first subcommittee's hearing about the issues upon which the local grievance panel found no probable cause of misconduct. The Supreme Court also found that the petitioner did not otherwise attempt to establish before the Superior Court that he did testify about those issues at the subcommittee hearing. *Kucej v. Statewide Grievance Committee*, 239 Conn. 449, 464 n.28.

Because the issues upon which the local grievance panel found no probable cause of misconduct had not been reviewed by the Statewide Grievance Committee before the file was assigned to the subcommittee, those issues were not decided by the Statewide Grievance Committee. Since there

had not been an adjudication of those issues by the Statewide Grievance Committee, and no final decision had been issued on any part of the complaint, it cannot be concluded that the review by the subcommittee of the issues upon which the local panel found no probable cause of misconduct constituted double jeopardy or a violation of the principles of collateral estoppel or res judicata.

After the subcommittee of the Statewide Grievance Committee found probable cause of misconduct on issues not addressed at its hearing, the petitioner was provided with written notice of the finding of probable cause, ample time to prepare to respond to the claims at a hearing, and a hearing to respond to the charges. The petitioner was, therefore, provided with the protections required by *In re: Ruffalo*, *supra*.

The petitioner fails to state sufficient grounds to grant the petition, and therefore, it should be denied.

CONCLUSION

For all of the above reasons, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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May 15, 1997

No. 96-1666

In The

Supreme Court Of The United States

October Term, 1996

JOHN C. KUCEJ,

Petitioner,

v.

STATEWIDE GRIEVANCE COMMITTEE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

APPENDIX

Sec. 27F. **Filing Complaints; Action; Time Limitation**

(a) Any person, or a grievance panel on its own motion, may file a written complaint alleging attorney misconduct whether or not such alleged misconduct occurred in the actual presence of the court. Complaints against attorneys shall be filed with the statewide bar counsel. Within seven days of the receipt of a complaint the statewide bar counsel shall:

(1) forward the complaint to a grievance panel in the judicial district in which the respondent maintains his principal office or his residence, provided that, if the respondent does not maintain such an address in this state, the statewide bar counsel shall forward the complaint to any grievance panel; and

(2) notify the complainant and the respondent, by certified mail with return receipt, of the panel to which the complaint was sent. The notification to the respondent shall be accompanied by a copy of the complaint.

The respondent shall have the right to respond within ten days of receipt of notification. The response shall be sent to the grievance panel to which the complaint has been referred.

The statewide bar counsel shall keep a record of all complaints filed. The complainant and the respondent shall notify the statewide bar counsel of any change of address or telephone number during the pendency of the proceedings on the complaint.

(b) If for good cause a grievance panel declines, or is unable pursuant to Sec. 27B (b), to investigate a complaint, it shall forthwith return the complaint to the statewide bar counsel to be referred by him or her immediately to another panel. Notification of such referral shall be given by the statewide bar counsel to the complainant and the respondent by certified mail with return receipt.

(c) The grievance panel, with the assistance of the grievance counsel assigned to it, shall investigate each complaint to determine whether probable cause exists that the attorney is guilty of misconduct.

(d) Investigations and proceedings of the grievance panel shall be confidential unless the attorney under investigation requests that such investigation and proceedings be public.

(e) The complainant and respondent shall be entitled to be present at any proceedings on the complaint at which testimony is given and to have counsel present, provided, however, that they shall not be entitled to examine or cross-examine witnesses unless requested by the grievance panel.

(f) The panel shall, within ninety days from the date the complaint was referred to it, file the following with the statewide grievance committee: its written determination concerning whether probable cause exists that the respondent is guilty of misconduct, a copy of the complaint and response, a transcript of any testimony heard by the panel, a copy of any investigatory file and copies of any documents, transcripts or other written materials which were available to the panel. These materials shall constitute the panel's record in the case. The panel may file a motion for

extension of time not to exceed thirty days with the statewide grievance committee which may grant the motion only upon a finding of good cause. If the panel does not complete its action on a complaint within the time provided in this section, the statewide committee shall inquire into the delay and shall order that the panel take action on the complaint forthwith, or order that the complaint be forwarded to and heard by another panel or a reviewing committee designated by the statewide grievance committee.

(g) The panel shall notify the complainant and the respondent of its determination. The determination shall be a matter of public record.

Sec. 27J **Action by Statewide Grievance Committee or Reviewing Committee**

(a) Upon receipt of the record from a grievance panel, the statewide grievance committee may assign the case to a reviewing committee which shall consist of at least three members of the statewide grievance committee, at least one third of whom are not attorneys. The statewide grievance committee may, in its discretion, reassign the case to a different reviewing committee. The committee shall regularly rotate membership on reviewing committees and assignments of complaints from the various grievance panels. An attorney who maintains an office for the practice of law in the same judicial district as the respondent may not sit on the reviewing committee for that case.

(b) The statewide grievance committee and the reviewing committee shall have the power to issue a subpoena to compel any person to appear before it to testify in relation to

any matter deemed by the statewide grievance committee or the reviewing committee to be relevant to the complaint and to produce before it for examination any books or papers which, in its judgment, may be relevant to such complaint. Any such testimony shall be on the record.

(c) If the grievance panel determines that probable cause exists that the respondent is guilty of misconduct, the statewide grievance committee or the reviewing committee shall hold a hearing on the complaint. If the grievance panel determines that probable cause does not exist, the statewide grievance committee or the reviewing committee shall review the determination of no probable cause, take evidence if it deems it appropriate and, if it determines that probable cause does exist, thereafter hold a hearing. All hearings following a determination of probable cause shall be public and on the record.

(d) The complainant and respondent shall be entitled to be present at all hearings and other proceedings on the complaint at which testimony is given and to have counsel present. At all hearings the respondent shall have the right to be heard in his own defense and by witnesses and counsel. The complainant and the respondent shall not be entitled to examine or cross examine witnesses unless requested by the reviewing committee. At the conclusion of the evidentiary phase of a hearing, the complainant and the respondent shall have the opportunity to make a statement, either individually or through counsel. The statewide grievance committee or reviewing committee may request oral argument.

(e) Within ninety days of the date the grievance panel filed its determination of probable cause or no probable cause with the statewide grievance committee, the reviewing

committee shall render its proposed decision and file it with the statewide grievance committee. The reviewing committee's record in the case shall consist of a copy of all evidence it received or considered, including a transcript of any testimony heard by it, and its proposed decision. The record shall also be sent to the statewide grievance committee. In its proposed decision, the reviewing committee shall recommend either dismissal of the complaint, the imposition of sanctions as authorized by Sec. 27M.1 or presentment of the respondent to the superior court. The reviewing committee shall forward a copy of the proposed decision to the complainant and the respondent. The proposed decision shall be a matter of public record. The reviewing committee may file a motion for extension of time not to exceed thirty days with the statewide grievance committee which shall grant the motion only upon a showing of good cause. If the reviewing committee does not complete its action on a complaint within the time provided in this section, the statewide committee shall, on motion of the complainant or the respondent or on its own motion, inquire into the delay and determine the appropriate course of action.

(f) If the reviewing committee finds probable cause to believe the respondent has violated the criminal law of this state, it shall report its findings to the statewide grievance committee.

(g) Within fourteen days of the issuance to the parties of the proposed decision by the reviewing committee, the complainant and the respondent may submit to the statewide grievance committee a statement in support of, or in opposition to, the proposed decision.

(h) If the statewide grievance committee does not assign a complaint to a reviewing committee, it shall have one hundred and twenty days from the date the panel's determination concerning probable cause was filed with it to render a decision dismissing the complaint, imposing sanctions and conditions as authorized by Sec. 27M.1 or directing the statewide bar counsel to file a presentment against the respondent. The decision shall be a matter of public record. The failure of a reviewing committee to complete its action on a complaint within the period of time provided in this section shall not be cause for dismissal of the complaint.

Section 27M **Action by Statewide Grievance Committee**

Within sixty days of the expiration of the fourteen day period for the filing of the statement under Section 27J(g), the statewide grievance committee shall issue a written decision either dismissing the complaint, imposing sanctions and conditions as authorized by Section 27M.1, directing the statewide bar counsel to file a presentment against the respondent in the superior court or referring the complaint to the same or a different reviewing committee for further investigation and a proposed decision. Before issuing its decision, the statewide grievance committee may, in its discretion, request oral argument. The statewide grievance committee shall forward a copy of its decision to the complainant, the respondent and the grievance panel which investigated the complaint. The decision shall be a matter of public record. If the statewide grievance committee finds probable cause to believe that the respondent has violated the criminal law of this state, it shall report its findings to the chief state's attorney.